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E. ROBERT SEAVER,

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO. ---------44--------- ORIGINAL

* * *

STATE OF TEXAS,

Plaintiff

v.

JOHN N. MITCHELL, ATTORNEY GENERAL OF THE UNITED STATES,

Defendant

* * *

MOTION FOR LEAVE TO FILE COMPLAINT, COMPLAINT, AND MOTION FOR EXPEDITED CONSIDERATION

* * *

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STATE OF TEXAS,

Plaintiff

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JOHN N. MITCHELL, ATTORNEY GENERAL OF THE UNITED STATES,

Defendant

* * *

MOTION FOR LEAVE TO FILE COMPLAINT

* * *

The State of Texas, by its Attorney General, respectfully asks leave of the Court to file its Complaint against John N. Mitchell, Attorney General of the United States, submitted herewith, for the reasons stated therein and in the supporting brief.

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STATE OF TEXAS,

Plaintiff

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JOHN N. MITCHELL, ATTORNEY GENERAL OF THE UNITED STATES,

Defendant

* * *

COMPLAINT

* * *

The State of Texas, Plaintiff, by its Attorney General, Crawford C. Martin, brings this action against the Defendant, John N. Mitchell, Attorney General of the United States, and for cause of action states as follows:

I.

The jurisdiction of this Court is invoked under Article III, Section 2, of the Constitution of the United States, and Section 1251(b)(3) of Title 28, United States Code.

II.

Plaintiff is a State of the United States and the Defendant is a citizen of the State of New York.

III.

Acting pursuant to the powers reposed in it as a sovereign State and in accordance with the responsibility imposed upon it by the Constitution of Texas

and the Constitution of the United States the Plaintiff has adopted provisions in its Constitution and statutes providing for and prescribing nondiscriminatory and reasonable election procedures for local, state, and national elections. These include provisions setting forth the qualifications necessary for a person to be a qualified elector and providing for the registration of such persons as a prerequisite to voting in elections held within the State of Texas.

IV.

Article VI, Sections 1 and 2, Constitution of Texas (Vernon's), and Articles 5.01, 5.02, Texas Election Code (Vernon's) provide that persons under the age of twenty-one (21) years shall not be allowed to vote in the State of Texas.

V.

The Congress of the United States has enacted, and the President has approved, Public Law 91-285, known as The Voting Rights Act Amendment of 1970 (hereafter referred to as the Act). Title III of the Act attempts to impose restrictions upon the power of the Plaintiff to provide and enforce nondiscriminatory and reasonable election procedures establishing the qualifications for electors in the State of Texas and providing for their registration. These provisions of the Act abolish and nullify the provisions of the Plaintiff's Constitution and statutes referred to in paragraph IV hereof.

VI.

Title III of the Act is not authorized under any of the powers conferred upon the Congress by any pro-

vision of the Constitution of the United States or the Amendments thereto.

VII.

Title III of the Act is contrary to and in derogation of Section 2 of Article I, Section 1 of Article II, the Tenth Amendment, Section 2 of the Fourteenth Amendment and the Seventeenth Amendment of the Constitution of the United States, and of the powers conferred upon the State of Texas by such provisions.

VIII.

To limit the right of suffrage to those who are 21 or older, as is done by the Plaintiff's Constitution and statutes, is a reasonable exercise of the Plaintiff's powers under the Constitution of the United States to set qualifications for voters and serves the important state interest of ensuring a mature electorate. A similar limit is imposed by 45 other states and the validity of using the age of 21 as a presumptive bench mark for entry into the franchise is explicitly recognized in Section 2 of the Fourteenth Amendment of the Constitution of the United States. By purporting to override the judgment of Plaintiff, and of 45 other states, and setting the age at 18, Congress has not exercised its powers under the Fourteenth Amendment in an appropriate manner with relation to the states.

IX.

Section 303 of the Act authorizes the Defendant, John N. Mitchell, as Attorney General of the United States, to enjoin and restrain the Plaintiff and its officials in the enforcement of the aforesaid provisions of its Constitution and statutes and to impose upon them

monetary fines and imprisonment. The Plaintiff, upon information and belief, has reason to believe and does believe that Defendant will seek to enforce all provisions of the Act against the Plaintiff and its officials.

X.

The provisions of Title III of the Act and the power conferred upon the Defendant thereunder operate to deny to Plaintiff the right to enforce provisions of its Constitution and statutes that have been duly adopted and enacted in furtherance of Plaintiff's sovereign powers and under specific authority of the Constitution of the United States and the amendments thereto. The importance of this controversy creates an urgent need for an adjudication by this Court in order to secure to Plaintiff its sovereign and constitutional powers and rights and to remove uncertainty about the validity of national, state, and local elections.

XI.

The Plaintiff, State of Texas, has no adequate remedy at law to redress the unconstitutional denial of its rights and has a constitutional and statutory right to resort to this Court to secure its rights.

WHEREFORE, Plaintiff prays:

1. That this Court take jurisdiction of the parties and subject matter of this action and by appropriate order require that Defendant answer this Complaint.

2. That a decree be entered declaring Title III of Public Law 91-285 to be unconstitutional and beyond the power of Congress.

3. That the Defendant be enjoined from taking any

action to enforce the provisions of Title III of Public Law 91-285.

4. That Plaintiff have such other and further relief as the Court may deem proper and necessary in order to secure its rights.

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Defendant

* * *

MOTION FOR EXPEDITED CONSIDERATION

* * *

The Plaintiff, State of Texas, respectfully moves this Court to expedite consideration of this cause and, if leave to file the Complaint is granted, to set early deadlines for the filing of the Answer by the Defendant and for the filing of briefs on the merits by the parties, and to set oral argument at an early date.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

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PROOF OF SERVICE

I, Crawford C. Martin, Attorney General of Texas, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of ----------, 1970, I served the foregoing Motion for Leave to File Complaint, Complaint, and Motion for Expedited Consideration upon the Defendant by depositing a copy in the United States mail, postage prepaid, and addressed to Honorable John N. Mitchell, Attorney General of the United States, Department of Justice, Tenth and Constitution Avenue, Washington, D. C. 20530.

CRAWFORD C. MARTIN